

ORDINANCE NO. _____

Amending City Code Sections 46-91 through 46-99 Regulating Noise

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GADSDEN, ALABAMA, as follows:

Section 1. Sections 46-91 through 46-99 of the Gadsden City Code are amended to read as follows:

Sec. 46-91. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All terminology used in this article, not defined in this section, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

Amplified Sound means any sound that is broadcast through electronically amplified equipment or sound that is electronically enhanced.

Commercial area means that area defined in chapter 130 as B-1, B-2, B-3, B-4 or O-1.

Construction means any site preparation, assembly, erection, substantial repair, alteration, or similar action, excluding demolition, for or of public or private rights-of-way, structures, utilities or similar property.

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Impulsive sound means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

Industrial area means that area defined in chapter 130 as I-1 or I-2.

Motor vehicle means any vehicle which is propelled or drawn on land by a motor, including, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies, all terrain vehicles, or racing

vehicles, but not including motorcycles. This does not include any vehicle, locomotive, or car operated exclusively on rail or rails.

Motorboat means any vessel which operates on water and which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices, jet skis and hover craft.

Motorcycle means an unenclosed motor vehicle having a saddle for the use of the operator and two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.

Muffler and *sound dissipative device* means a device for abating the sound of escaping gases of an internal combustion engine.

Noise control officer (NCO) means the chief of police and officers of the police department.

Noise disturbance means any sound which:

- (1) Endangers or injures the safety or health of humans or animals;
- (2) Annoys or disturbs a reasonable person; or
- (3) Endangers or injures personal or real property.

Noise sensitive zone means any area designated pursuant to section 46-97(b)(14) for the purpose of ensuring exceptional quiet and shall include an area within 500 feet from where a school, hospital, nursing home, church, court, or public library is located.

Plainly audible means any prohibited sound from a vehicle, building, structure or open space which clearly can be heard at a distance of 10 feet or more from the vehicle or 50 feet from the building, structure, or open space, which either annoys, disturbs, or injures or endangers the comfort, health, peace or safety of a reasonable person. The distance measured shall be the actual distance between buildings if less than 50 feet in residential zoned districts. Measurement standards shall be by the auditory senses, based upon direct line of hearing. Words or phrases need not be discernible. Bass reverberations are included.

Powered model vehicle means any self-propelled airborne, waterborne or land borne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car, or rocket.

Public right-of-way means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

Public space means any real property or structures thereon which are owned or controlled by a governmental entity.

Real property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

Reasonable person means an individual of ordinary sensitivities.

Residential area means that area defined in chapter 130 as R-1, R-2 or R-T.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of

that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound level means that measurement standards shall be by the auditory sense of a reasonable person, based upon direct line of hearing.

Vibration means an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference point.

Weekday means any day Monday through Friday which is not a municipal holiday.

Sec. 46-92. Administration; powers and duties of noise control officer.

(a) *Responsibility for administration.* The noise control program established by this article shall be administered by the building official in conjunction with the police department.

(b) *Powers of noise control officer.* In order to implement and enforce this article and for general purposes of sound and vibration abatement and control, the noise control officer shall have, in addition to any other authority vested in him, the power to:

(1) *Inspections.*

a. Upon presentation of proper credentials, enter and inspect any private property or place and inspect any report or records at any reasonable time when granted permission by the owner or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, a search warrant may be sought from a court of competent jurisdiction upon showing of probable cause to believe that a violation of this article may exist.

b. Stop any motor vehicle, motorcycle, motorboat or powered model vehicle operated on a public right-of-way, public space, or public waterway reasonably suspected of violating any provision of this article and issue a notice of violation or abatement order which may require it to be inspected or tested as the officer may reasonably require.

(2) *Records.* Require the owner or operator of any commercial or industrial activity to establish and maintain records and make such reports as the noise control officer may reasonably prescribe.

(3) *Measurements by owner or operator.* Require the owner or operator of any commercial or industrial activity to measure the sound level of or the vibration from any source in accordance with the methods and procedures and at such locations and times as the noise control officer may reasonably prescribe and to furnish reports of the results of such measurements to the noise control officer. The noise control officer may require the measurements to be conducted in the presence of its enforcement officials.

(4) *Noise sensitive zone recommendations.* Prepare recommendations, to be approved by the city council, for the designation of noise sensitive zones which contain noise sensitive activities. Noise sensitive activities include, but are not limited to,

operations of schools; libraries open to the public, churches, hospitals, court, and nursing homes.

(c) *Duties of noise control officer.* In order to implement and enforce this article effectively, the noise control officer shall:

- (1) *Standards.* Assist in setting standards for compliance of noise violation ordinances.
- (2) *Investigation of violations.* Investigate and pursue possible violations of this article.
- (3) *Delegation of authority.* Delegate functions, where appropriate under this article, to personnel within the police department and, subject to approval of the mayor, to other agencies or departments.
- (4) *Periodic reports.* Evaluate and report, every year, on the effectiveness of the noise control program and make recommendations for any changes necessary to improve the program. This report shall be made to the mayor, who may amend it after consultation with the noise control officer, and then submit it to the city council for consideration.

Sec. 46-93. Duties of other departments.

(a) *Departmental actions.* All departments and agencies shall, to the fullest extent consistent with other law, carry out their programs in such a manner as to further the policy of this article.

(b) *Departmental cooperation.* All departments and agencies shall cooperate with the noise control officer to the fullest extent in enforcing this article.

(c) *Departmental compliance with laws.* All departments and agencies shall comply with federal and state laws and regulations and the provisions and intent of this article respecting the control and abatement of noise to the same extent that any person is subject to such laws and regulations.

Sec. 46-94. Enforcement.

(a) *Abatement orders.*

(1) Except as provided in subsection (a)(2) of this section, in lieu of issuing a notice of violation as provided for in subsection (b) of this section, the noise control officer or other official responsible for enforcement of any provision of this article may issue an order requiring abatement of any source of sound or vibration alleged to be in violation of this article within a reasonable time period and according to guidelines which the noise control officer may prescribe.

(2) An abatement order shall not be issued when the noise control officer or other enforcement official has reason to believe that there will not be compliance with the abatement order.

(b) *Notice of violation.* Except where a person is acting in good faith to comply with an abatement order issued pursuant to subsection (a)(1) of this section, violation of any provision of this article shall be cause for a complaint to be issued by the noise control officer or other

responsible enforcement official according to procedures which the noise control officer may prescribe or as set forth in section 82-31.

- (c) *Immediate threats to health and welfare.*
 - (1) The noise control officer shall have the discretion to order an immediate halt to any sound which exposes any person to continuous sound levels that pose an immediate threat to the health, welfare and peace. Within five days following issuance of such an order, the noise control officer shall apply to the appropriate court for an injunction to replace the order.
 - (2) No order pursuant to subsection (c)(1) of this section shall be issued if the only persons exposed to sound levels cited above are exposed as a result of trespass, invitation upon private property by the person causing or permitting the sound, or employment by the person or contractor of the person causing or permitting the sound.
 - (3) Any person subject to an order issued pursuant to subsection (c)(1) of this section shall comply with such order until the sound is brought into compliance with the order, as determined by the noise control officer, or a judicial order has superseded the noise control officer's order.
 - (4) Any person who violates an order issued pursuant to this section shall, for each day of violation, be fined not less than \$200.00.
- (d) *Presumption of accountability.*
 - (1) The occupant of the property or residential unit, or the agent of the occupant, on which a generally or specifically prohibited activity takes place, shall be presumed to have permitted the activity to occur.
 - (2) The occupant of the property or residential unit, or the agent of the occupant, who shall permit another person to create a noise or conduct an activity in violation of this section shall be deemed responsible for the noise or activity to the same extent as the person creating the noise or conducting the activity and shall be subject to the same punishment.

Sec. 46-95. Exceptions and variances.

- (a) *Emergencies* The provisions of this article shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- (b) *Special variances.*
 - (1) The noise control officer shall have the authority, consistent with this section, to grant special variances which may be requested pursuant to section 46-97(b)(5), pertaining to construction, and section 46-97(b)(8), pertaining to explosives, firearms and similar devices.
 - (2) Any person seeking a special variance pursuant to this section shall file an application with the noise control officer. The application shall contain information which demonstrates that bringing the source of sound or activity for

- which the special variance is sought into compliance with this article would constitute an unreasonable hardship on the applicant, on the community or on other persons. Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the noise control officer containing any information to support his claim. If the noise control officer finds that a sufficient controversy exists regarding an application, a public hearing may be held.
- (3) In determining whether to grant or deny the application, the noise control officer shall balance the hardship to the applicant, the community, and other persons of not granting the special variance against the adverse impact on the health, safety, peace and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the special variance. Applicants for special variance and persons contesting special variances may be required to submit any information the noise control officer may reasonably require. In granting or denying an application, the noise control officer shall place on public file a copy of the decision and the reasons for denying or granting the special variance.
- (4) Special variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special variance shall terminate it and subject the person holding it to those provisions of this article regulating the source of sound or activity for which the special variance was granted.
- (5) Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like applications for initial special variances under subsection (b)(2) of this section.
- (6) The noise control officer may issue guidelines defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.
- (c) *Variances for time to comply.*
- (1) Any person seeking a variance for time to comply shall file an application with the noise control officer. The application shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this article prior to the date requested in the application would constitute an unreasonable hardship on the applicant, on the community, or on other persons. An individual who claims to be adversely affected by allowance of the variance for time to comply may file a statement with the noise control officer containing any information to support his claim. If

- the noise control officer finds that a sufficient controversy exists regarding an application, a public hearing may be held.
- (2) In determining whether to grant or deny the application, the noise control officer shall balance the hardship to the applicant, the community, and other persons of not granting the variance for time to comply against the adverse impact on health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance. Applicants for variances for time to comply and persons contesting variances may be required to submit any information the noise control officer may reasonably require. In granting or denying an application, the noise control officer shall place on public file a copy of the decision and the reasons for denying or granting the variance for time to comply.
- (3) Variances for time to comply shall be granted to the applicant containing all necessary conditions, including a schedule for achieving compliance. The variance for time to comply shall not become effective until all conditions of the variance are agreed to by the applicant. Noncompliance with any condition of the variance shall terminate the variance and subject the person holding it to those provisions of this article for which the variance was granted.
- (4) Application for extension of time limits specified in variances for time to comply or for modification of other substantial conditions shall be treated like applications for initial variances under subsection (c)(1) of this section, except that the noise control officer must find that the need for the extension or modification clearly outweighs any adverse impacts of granting the extension or modification.
- (5) The noise control officer may issue guidelines defining the procedures to be followed in applying for a variance for time to comply and the criteria to be considered in deciding whether to grant a variance.

(d) *Standard for granting variances.* Variances may be granted if findings are made that immediate compliance with this article cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, or encroachment upon an existing noise, or because of unavailability of feasible technology or control methods. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances.

Sec. 46-96. Guidelines for determining sound levels.

The definition of "plainly audible" shall be the measurement standard. Among circumstances which may be considered in determining whether a noise is unlawful and a nuisance include, but are not limited to the following:

- (1) Volume of the noise;
- (2) Intensity of the noise;
- (3) Whether the nature of the noise is usual or unusual for the time and place;

- (4) Whether the origin of the noise is natural or unnatural;
- (5) The volume and intensity of the background noise, if any;
- (6) The proximity of the noise to sleeping facilities;
- (7) The nature and the zoning of the area from which the noise emanates;
- (8) The density of inhabitation of the area from which the noise emanates;
- (9) Time of day or night in which the noise occurs;
- (10) Duration of the noise;
- (11) Whether the noise is recurrent, intermittent, or constant;
- (12) Whether the noise is produced by commercial or non-commercial activity.

Sec. 46-97. Prohibited acts generally.

(a) *Noise disturbance prohibited.* No person shall make, continue, or cause to be made or continue any noise which, because of its volume level, duration, and character, either annoys, disturbs, or injures or endangers the comfort, health, peace or safety of a reasonable person. It shall be unlawful and a nuisance for any person to permit any such noise to be made in or upon any residence, business or other structure or upon any premises or in any vehicle owned or possessed by him/her or under his/her control or management.

The provisions of this article are adopted for the purpose of preventing a noise disturbance or unreasonable noise. Above certain levels or durations and during specific times of day, unreasonable noise or noise disturbance is detrimental to the health, safety and welfare of the citizenry and the individual's right to peaceful and quiet enjoyment.

Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this article. Nothing in this article is intended to deter individuals from lawfully exercising the individual right to freedom of speech or any other freedom guaranteed under the Constitution of the United States of America or of the State of Alabama.

(b) *Specific prohibitions.* The following acts, and the causing thereof, are declared to be in violation of this article:

- (1) *Radio, television set, musical instrument and similar devices.* Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:
 - a. Between the hours of 9:00 p.m. and 7:00 a.m. the following day in such a manner as to be plainly audible across a real property boundary or within a noise sensitive zone, except for activities open to the public and for which a permit has been issued by the city.
 - b. In such a manner as to create a noise disturbance at a distance of 10 feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space, or in a boat on public waters.

- c. In such a manner as to create a noise disturbance to any person other than the operator of the device, when operated by any passenger on a common carrier.

This subsection shall not apply to noncommercial spoken language covered under subsection (b)(2) of this section.

- (2) *Loudspeakers and public address systems.* Using or operating any loudspeaker, public address system, or similar device between the hours of 10:00 p.m. and 8:00 a.m. the following day, such that the sound creates a noise disturbance plainly audible across a residential real property boundary or within a noise sensitive zone or on a public right-of-way or public space.
- (3) *Animals and birds.* It is unlawful to own, possess or harbor any animal which frequently, or for continued duration, howls, barks, meows, squawks or makes other sounds which create excessive and unnecessary noise across a residential or commercial real property line or within a noise-sensitive area between the hours of 10:00 p.m. and 8:00 a.m. the following day. For purposes of this section, a barking dog shall mean a dog that barks, bays, cries, howls or makes any other noise to the disturbance of any person regardless of whether the dog is physically situated in or upon private property; provided, however, that a dog shall not be deemed a barking dog if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon property in or upon which the dog is situated.
- (4) *Loading, unloading and delivery activities.* Loading, unloading, delivery, opening, closing or other handling of boxes, crates, containers, supplies, foodstuffs, building materials, garbage cans, or similar objects between the hours of 9:00 p.m. and 7:00 a.m. the following day across a residential real property boundary, within a noise sensitive zone or within a residential area. This includes all forms of delivery, whether delivered by the distributors, agents, dealers, storers or consumers, by their own vehicles, by hired trucks, by common carriers or by other means, including time while waiting to load, unload, deliver, open, close or handle, and sounds or signals (including flashing lights) involved in backing up of such vehicles.
- (5) *Construction.* Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work between the hours of 7:00 p.m. and 7:00 a.m. the following day on weekdays or at any time on weekends or holidays, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone, except for emergency work of public service utilities or by special variance issued pursuant section 46-95(b); provided, however, that during the months of June through August work may be done to install, repair or replace a roof or a part thereof

- between 5:00 a.m. and 7:00 a.m. on weekdays. This subsection shall not apply to the use of domestic power tools subject to subsection (b)(15) of this section.
- (6) *Motor vehicle, motorcycle or motorboat operation, repair and testing.* Repairing, operating, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone.
- (7) *Place of public entertainment.* Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than 75 dB(A) as read by the slow response on a sound level meter at any point that is normally occupied by a customer, unless a conspicuous and legible sign is located outside such place, near each public entrance, stating "Warning: Sound Levels Within May Cause Permanent Hearing Impairment."
- (8) *Explosive, firearm, and similar devices.* The use or firing of explosives, firearms, or similar devices which create impulsive sound so as to cause a noise disturbance across a residential real property boundary, within a noise sensitive zone, or on a public space or right-of-way, without first obtaining a special variance issued pursuant to section 46-95(b). Such permit need not be obtained for licensed game-hunting activities on property where such activities are authorized.
- (9) *Powered model vehicle.* Operating or permitting the operation of a powered model vehicle so as to create a noise disturbance across a residential real property boundary, in a public space or within a noise sensitive zone between the hours of 7:00 p.m. and 7:00 a.m. the following day. Maximum sound levels in a public space during the permitted period of operation shall conform to the plainly audible standard and shall be measured at a distance of 10 feet from any point on the path of the vehicle. Maximum sound levels for residential property and noise sensitive zones during the permitted period of operation shall conform to the plainly audible standard and shall be measured at a distance of 10 feet from any point on the path of the vehicle.
- (10) *Vibration.* Operating or permitting the operation of any device that creates vibration which is above the vibration perception threshold of an individual at or beyond the property boundary of the source if on private property or at 10 feet from the source if on a public space or public right-of-way. For the purposes of this section, the term "vibration perception threshold" means the minimum ground- or structure-borne vibrational motion necessary to cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

- (11) *Stationary non-emergency signaling device.*
- a. Sounding or permitting the sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place, for more than three minutes in any hourly period.
 - b. Devices used in conjunction with places of religious worship shall be exempt from the operation of this provision.
 - c. Sound sources covered by this provision and not exempted under subsection (b)(11)b of this section shall be exempted by the city using criteria set forth in section 46-95(b).
- (12) *Emergency signaling device.*
- a. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in subsection (b)(12)b of this section.
 - b.
 1. Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not before 8:00 a.m. or after 6:00 p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed 60 seconds.
 2. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall not occur before 8:00 a.m. or after 6:00 p.m. The time limit specified in Subsection 46-97(b)(12)b.1. shall not apply to such complete system testing.
 - c. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within 15 minutes of activation.
- (13) *Motorboat.* Operating or permitting the operation of any motorboat in any lake, river, stream, or other waterway in such a manner as to exceed a plainly audible level at 50 feet or the nearest shoreline, whichever distance is less.
- (14) *Noise sensitive zone.*
- a. Creating or causing the creation of any sound within any noise sensitive zone designated pursuant to section 46-92(b)(4), so as to disrupt the activities normally conducted within the zone, provided that conspicuous signs are displayed indicating the presence of the zone.
 - b. Creating or causing the creation of any sound within any noise sensitive zone, designated pursuant to section 46-92(b)(4), containing a hospital,

- nursing home, or similar activity, so as to interfere with the functions of such activity or disturb or annoy the patients in the activity, provided that conspicuous signs are displayed indicating the presence of the zone.
- (15) *Domestic power tool.* Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, lawnmower, blower, or similar device used outdoors in residential areas between the hours of 9:00 p.m. and 7:00 a.m. the following day on weekdays and on Saturdays, Sundays and legal holidays between the hours of 7:00 p.m. and 9:00 a.m.
 - (16) *Street sale.* Offering for sale or selling anything by shouting or outcry in a manner to either annoy, disturb, or injure or endanger the comfort, health, peace, or safety of a reasonable person within any residential or commercial area of the city, except in a stadium, sports arena, or where a variance has been granted.
 - (17) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling, or singing on public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m. the following day so as to annoy or disturb the quiet, comfort, or repose of a reasonable persons in any hotel, in an office, residence, or other lodging facility.

Sec. 46-98. Sound levels by receiving land use.

- (a) *Maximum permissible sound levels.* No person shall operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use.
- (b) *Exemptions.* The provisions of this section shall not apply to:
 - (1) Activities covered by the following subsections: 46-97(b)(5) (pertaining to construction), 46-97(b)(8) (pertaining to explosives, firearms, and similar devices), 46-97(b)(11) (pertaining to stationary non-emergency signaling devices), 46-97(b)(12) (pertaining to emergency signaling devices), 46-97(b)(13) (pertaining to motorboats), 46-97(b)(15) (pertaining to domestic power tools), and 46-99(d) (pertaining to refuse collection vehicles).
 - (2) The unamplified human voice.
 - (3) Interstate railway locomotive and cars.
 - (4) Aircraft in flight.
 - (5) Safety and protective devices, such as relief valves, where noise suppression would defeat the safety release purpose of the device.
 - (6) Parades, concerts, festivals, fairs or other such activities which are open to the public and operated or conducted in accordance with other applicable ordinances.
 - (7) Athletic, musical or cultural activities or events, including practices and rehearsals, conducted by or under the auspices of governmental units or educational institutions.
 - (8) Natural phenomena.

Sec. 46-99. Motor vehicle maximum sound levels.

(a) *Generally.* No person shall operate or cause to be operated a motor vehicle or motorcycle on a public right-of-way or on private property at any time in such a manner that the sound level emitted by the motor vehicle or motorcycle is in violation of the definition of a noise disturbance and is plainly audible.

(b) *Muffler or other sound dissipative device.*

- (1) No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler or other sound dissipative device in good working order and in constant operation.
- (2) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, any muffler or sound dissipative device on a motor vehicle or motorcycle other than for purposes of maintenance, repair, or replacement.
- (3) No person shall modify the exhaust system of a motor vehicle or any other noise abatement device of a motor vehicle or operate any such vehicle or device in this city in a manner that the noise emitted by the motor vehicle is above that emitted by the vehicles as originally manufactured. Muffler cutouts, bypasses, or other devices which increase sound emitted shall be unlawful.

(c) *Horn and signaling devices.* The following acts and the causing thereof are declared to be in violation of this article:

- (1) The sounding of any horn or other auditory signaling device on or in any motor vehicle on any public right-of-way or public space, except as a warning of danger as provided in state law.
- (2) The sounding of any horn or other auditory signaling device which causes a noise disturbance.

(d) *Refuse collection vehicles:* No person shall:

- (1) Operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse and which creates, during the compacting cycle, a sound level in excess of 75 dBA when measured at 50 feet (15 meters) from any point on the vehicle;
- (2) Operate or permit the operation of the compacting mechanism of any motor vehicle which compacts refuse, between the hours of 7:00 p.m. and 7:00 a.m. the following day within 1,000 feet of an occupied dwelling in a residential area or in a noise sensitive zone;
- (3) Collect refuse with a refuse collection vehicle between the hours of 7:00 p.m. and 7:00 a.m. the following day within 1,000 feet of an occupied dwelling in a residential area or in a noise sensitive zone.

(e) *Standing motor vehicle.* No person shall operate or permit the operation of any motor vehicle with a gross vehicle weight rating (GVWR) in excess of 10,000 pounds, or any auxiliary equipment attached to such vehicle, for a period longer than ten minutes in any hour

while the vehicle is stationary, for reasons other than traffic congestion, on a public right-of-way or public space within 150 feet of a residential area or designated noise sensitive zone, between the hours of 7:00 p.m. and 7:00 a.m. the following day.

Section 2. A violation of this ordinance shall be punished as provided in Section 1-7 of the Gadsden City Code.

Section 3. The provisions of this ordinance shall be effective on publication.

Section 4. The sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable. If any section, subsection, paragraph, sentence, clause and phrase of this ordinance is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other section, subsection, paragraph, sentence, clause and phrase of this ordinance. The city council declares that it is its intent that it would have enacted this ordinance without such invalid or unconstitutional provisions.

Section 5. The provisions of this ordinance repeal any prior ordinance or provision of the Gadsden City Code to the extent of any conflict.

I certify that the City Council of the City of Gadsden, Alabama, duly adopted this ordinance at an open public meeting held on _____, 2012.

Iva Nelson, City Clerk

APPROVED on _____, 2012

Sherman Guyton, Mayor